

### Remarks

The Office action mailed February 2, 2000, has been reviewed, and certain amendments have been made in the application. In view of the amendments and the following remarks, Applicant submits the application now is in condition for allowance.

The Examiner rejected claims 1-20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter the Applicants regard as the invention. Reconsideration is requested.

In support of the indefiniteness rejection, the Examiner stated that the phrase "the adjacent inner thighs" does not have a proper antecedent basis and that it is not clear whether the thighs referred to are those of the wearer or of the garment. Applicants have amended the preamble of claim 1 to recite that the garment is for "a person having adjacent inner thighs." The body of claim 1 has been amended to specify that the inner thighs are those "of the wearer." Accordingly, all indefiniteness of claim 1 has been eliminated.

As to claims 8 and 18, the Examiner stated that there is no antecedent basis for "the inner aspect." The claims have been rectified by deletion of this terminology.

The Examiner rejected claims 1 and 5-13 as unpatentable under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 759,833 issued to Stall. Reconsideration of this rejection is requested.

Applicants' claim 1 is directed to an athletic garment with guard members "positioned to substantially cover the adjacent inner thighs of the wearer." The term "inner thighs" is defined in the specification at page 3, lines 3-6, as follows:

As used herein, "inner thigh" refers to the medial<sup>1</sup> aspect of the thigh, that is, the area generally between the front and back of the leg and between the knee and groin. This is to be distinguished from the frontal aspect of the thigh.

Thus, "inner thigh" means the area of each thigh that faces or opposes the other thigh. Applicants have amended claim 1 to state that the pads "substantially cover" the inner thighs, to clarify that the guard members cover substantially the entire inner thigh area and not just a minor part of it. As explained in the specification at page 1, lines 7-17, this anatomical area is especially tender and particularly vulnerable in baseball where the catcher or infielder must squat in a knee-apart or fundamental ready position.

Stall shows football trousers with pads over the front of the thighs and elsewhere. There are no pads on the inner thighs, as recited in Applicants' claim 1. In that regard, note that Applicants' definition of inner thighs specifically distinguishes the front of the thighs. Thus, Stall does not teach a garment with pads that cover the inner thighs of the wearers, and does not anticipate claim 1.

Claims 5-13 depend from claim 1 and include all of the features of claim 1. Accordingly, these claims likewise are patentable over Stall. Therefore, the Section 102 rejection should be withdrawn.

The Examiner rejected claims 1 and 5-13 as unpatentable under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,377,693 issued to Loper et al. Reconsideration of this rejection is requested.

Loper et al. shows a leg alignment apparatus for keeping the legs separated and the spine aligned during sleep. (Column 1, lines 12-20) To this end, a pair of pajama pants are

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<sup>1</sup> "Medial" means "toward the middle." *Webster's New Collegiate Dictionary*, G. & C. Merriam Co. (Springfield, MA, 1979) at p. 707 (copy attached).

provided with two pairs of small, thick cushions, one pair above the knees and one pair below the knees, all on the inside of the leg. The pads must be thick enough to maintain the knees in a spaced apart position when the wearer is on his (or her) side. (Column 2, lines 36-64) There is no teaching in this reference of protective pads which "substantially cover" the tender inner thigh area, as in Applicants' claim 1. Accordingly, Loper et al. does not anticipate claim 1

Claims 5-13 depend from claim 1 and include all of the features of claim 1. Accordingly, these claims likewise are patentable over Loper et al. Therefore, the Section 102(b) rejection should be withdrawn.

The Examiner rejected claims 2-4 and 14-20 as unpatentable under 35 U.S.C. § 103(a) as obvious over Stall. Reconsideration is respectfully requested.

Claims 2-4 and 14-20 depend from claim 1 and include all the features of claim 1, which claims an athletic garment with inner thigh guards. As explained above, Stall does not show any padding on the inner thigh. Nor is there any suggestion anywhere in the Stall description of the need to protect the inner thigh distinct from the frontal thigh. Thus, there is no basis for extending the teachings of Stall to include coverage of the inner thigh area. Consequently, Stall fails to provide a prima facie showing of obviousness under Section 103 as to claim 1 or as to dependent claims 2-4 and 14-20; therefore, withdrawal of the Section 103 rejection of these claims respectfully is requested.

The Examiner rejected claims 2-4 and 14-20 as unpatentable under 35 U.S.C. § 103(a) as obvious over Loper et al. Reconsideration is respectfully requested.

Claims 2-4 and 14-20 depend from claim 1, which claims an athletic garment with inner thigh guards. As explained above, Loper et al. is not even directed to protecting the inner

thigh. Rather, it is specifically directed to spine-alignment devices, namely, pajama bottoms with thick spacing pads above and below the knees.

Thus, there is no suggestion of extending the pads of Loper et al. to cover substantially the entire inner thigh in a manner that would prevent injuries to players during baseball games. Indeed, if the thick pads in Loper et al. did cover the entire inner thigh it would prevent the spine-alignment device of the reference from operating as intended; thick padding high on the inside of the thigh near the groin would cause the legs to be hyper-extended and prevent proper positioning of the body. Therefore, Loper et al. does not provide a prima facie showing of obviousness, as is required to support a rejection under Section 103. Thus, dependent claims 2-4 and 14-20 are allowable over Loper et al.

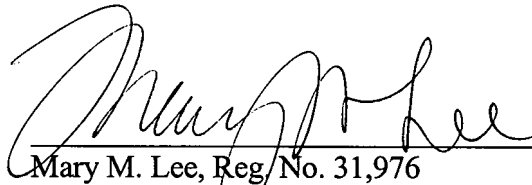
Applicants have added new claims 21-40 to more completely claim the invention in the scope to which the Applicants are entitled. New independent claim 21 is directed to an athletic garment in which the inner thigh guard members are "substantially flush with the garment." This feature is illustrated in the drawings and inherent in the description. The guard members would have to be relatively thin or "low profile" in order to permit the strenuous running and other physical activity of athletic events. How could a baseball player run bases wearing the spine alignment pants of Loper et al.; the player would have to waddle holding his legs apart unnaturally to keep the pads from hitting each other. Neither does Stall suggest low profile guard members which cover the wearer's inner thighs. The padding in the Stall patent is thick and quilted and bulges out from the wearer's legs. In the football pants of Stall, there is no need for a low-profile pad, because the pads are positioned anatomically where they will not interfere with running and walking. Thus, new claims 21-40 are patentable over the references of record.

Enclosed herewith are copies of proposed new formal drawings (2 sheets) to replace the informal drawings submitted with the application. Upon receiving notice of the Examiner's approval of these proposed new drawings, they will be submitted to the Official Draftsman as required.

Based on the foregoing, it is submitted that all the claims herein now are in condition for allowance. If the Examiner has any questions or comments concerning the instant application or this Amendment, the Examiner is invited to contact the undersigned.

This is intended to be a complete response to the Office action mailed February 2, 2000.

Respectfully Submitted,



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